

Before the
FEDERAL COMMUNICATIONS COMMISSION **RECEIVED**
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Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Closed Captioning and Video Description)
of Video Programming)

Implementation of Section 305 of the)
Telecommunications Act of 1996)

Video Programming Accessibility)

MM Docket No. 95-176

To: The Commission

COMMENTS OF TELEMUNDO GROUP, INC.

Telemundo Group, Inc. ("Telemundo"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, hereby submits these Comments in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding. 1/ This *Notice* was issued pursuant to the video programming accessibility provision of the Telecommunications Act of 1996 ("Telecom Act"), 2/

1/ *Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176, FCC 97-4 (rel. Jan. 17, 1997) ("*Notice*").

2/ Pub.L. 104-104, 110 Stat. 56 § 305 (1996). Section 305 of the Telecommunications Act of 1996 added Section 713 to the Communications Act of 1934, which was codified at 47 U.S.C. § 613.

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and was based in part on comments already filed in response to the Commission's *Notice of Inquiry*. ^{3/}

Telemundo is one of the leading sources of Spanish language news, information and entertainment programming for the nation's Hispanic population, which traditionally has been, and remains, unserved or underserved by English language television. Telemundo controls the licensees of seven full-power UHF television stations in the continental United States and one full-power VHF television station in San Juan, Puerto Rico. It also is the parent of Telemundo Network, Inc., which broadcasts 24 hours of Spanish language programming per day for distribution to its owned stations and to 43 Telemundo network affiliates across the country.

Telemundo submits these Comments in order to stress the unique difficulties it would face from the sudden imposition of a closed captioning requirement on foreign language programming. Given the scarcity of foreign language captioners and other U.S. foreign language programmers, Telemundo would be burdened disproportionately by mandatory captioning requirements. Telemundo already faces significant competitive challenges because it suffers from the higher costs associated with operating and providing original programming for a Spanish language broadcast network in the United States. These greater costs must then be recovered from a *much* smaller potential audience than that available to English language programmers. The limited potential audience results in disproportionately low advertising revenues

^{3/} 11 FCC Rcd 4912 (1996). The Commission has announced that the comments filed in this proceeding are to be used to satisfy the inquiry mandated by the Telecom Act. *Order*, FCC 96-71 (rel. Feb. 27, 1996).

associated with the Spanish language broadcast market. A closed captioning requirement on foreign language programming would simply add to the inequities that limit Telemundo's ability to serve an expanding, but yet underserved, U.S. Hispanic population.

I. THE STATUTE AND THE LEGISLATIVE HISTORY SUPPORT EXEMPTION OF PROGRAMMING LIKE TELEMUNDO'S FROM CLOSED CAPTIONING REQUIREMENTS.

The text of Section 305 explicitly permits exemptions for that programming for which captioning would be "economically burdensome to the provider or owner of such programming." ^{4/} Although the statute does not define what constitutes a burden, the statute, by focusing on the burden "to the provider" of that particular programming, underscores that the Commission should be more willing to exempt providers with a smaller audience share or unique programming situations.

The legislative history of the section confirms this reading. The House Report states that "[w]hen considering [closed captioning] exemptions . . . the Commission shall consider several factors, including but not limited to . . . the nature and cost of providing closed captions; . . . the impact on the operations of the program provider; . . . the financial resources of the program provider . . . and the financial impact of the program; . . . and the cost of captioning, considering the relative size of the market served or the audience share." ^{5/} This interpretation of Section 305, which emphasizes an examination of the costs viewed in light of the economic

^{4/} See 47 U.S.C. § 613.

^{5/} See H.R. REP. NO. 204, 104th Cong., 1st Sess. 115 (1995).

circumstances of the provider, was also adopted by the Conference Report of the Telecom Act. 6/

Pursuant to these Congressional directives, and the Commission's own review of the legislative history, 7/ the Commission should examine the economic context of the programming, as well as the cost and availability of captioning, before it imposes mandatory captioning requirements on that programming. The unique difficulties peculiar to the foreign language captioning market require that the Commission tailor any rules to take into account the differences between English and foreign language programming, including that foreign language programmers would have to pass through the disproportionate costs of captioning their programming to much smaller potential audiences.

**II. AS A NETWORK DEDICATED TO SERVING THE U.S.
SPANISH SPEAKING POPULATION, TELEMUNDO WOULD
SUFFER A DISPROPORTIONATE ECONOMIC BURDEN
FROM ANY GENERAL CAPTIONING REQUIREMENT.**

In an attempt to serve its audience, Telemundo, with the help of private organizations, already captions its national news coverage. 8/ Although Telemundo would like to extend its captioning to other programming voluntarily, it is not currently economically feasible to do so.

6/ See CONF. REP. 104-458, 104th Cong., 2d Sess. 183-84 (1996).

7/ See, e.g., Notice at ¶ 70.

8/ Specifically, Telemundo captions its two half-hour newscasts on weekdays, for a total of five hours per week.

Spanish speaking programming does not enjoy a captioning market nearly as developed as that of English language television. Even in the much broader English language television market, the Commission has witnessed the supply of closed captioners progress only slowly. The Commission certainly does not expect the supply of Spanish speaking captioning providers to develop more quickly than that of English speaking captioners. Moreover, as there are no captioning requirements outside the United States, it is even more unlikely that a sufficient supply of Spanish speaking captioners will develop any time soon.

Telemundo's complete schedule of Spanish speaking programming would leave it hostage to the uncertainty of the immature Spanish speaking captioning market. Telemundo faces at least two substantial costs from closed captioning its taped programming. First, unlike many English speaking programmers, Telemundo will have to independently caption most, if not all, of the syndicated programming it purchases, as substantial amounts of this programming originates in countries with no closed captioning requirements. Second, Telemundo must endure significant costs involved in captioning its own library of programming. Not only may these costs be higher than costs experienced by English language television given the Spanish captioning market, but Telemundo is far less likely to be able to pass through the costs of captioning to parties to whom it may sell its original taped programming as many of these parties operate outside the United States and beyond the scope of any closed captioning requirement.

In addition, because Telemundo does not re-run much of its programming the entire cost of captioning would have to be recovered based on a single broadcast. This feature of the Telemundo network -- which avoids repeat programming -- makes

the recovery of captioning costs even more difficult. The Commission certainly should not adopt rules that punish broadcasters who strive to provide original -- rather than repeat -- programming. But the strict application of captioning requirements on entities like Telemundo would provide a strong economic incentive to repeat captioned programming in place of non-captioned original programming.

Nor can Telemundo be certain that the higher costs of closed captioning that it would sustain would not hinder its ability to serve the Spanish speaking community. Closed captioning would only increase the existing costs of Spanish speaking programming. Telemundo's programming has always had a smaller potential audience than English speaking programming. In addition, Telemundo currently faces not only the cost disadvantages associated with UHF stations but the prospect of the tremendous capital costs necessary to convert to DTV. Also, unlike English speaking UHF or cable networks, Telemundo constantly faces the extraordinary economic challenge of having to produce original Spanish language programming for its audience, since it cannot rely on simply acquiring programming through general market syndication.

These cost inequities cannot be offset by additional revenues. In fact, the revenue available to Spanish language broadcasters are substantially less on a per capita basis than the revenue available to other broadcasters. In 1995, Spanish language television had an aggregate audience share of 4 percent, but received only 1.7 percent of advertising revenue. ^{9/} Spanish language broadcasters like Telemundo thus

^{9/} See Goldsmith, J., "Spanish Language TV Is Booming But Ad Revenue Hasn't Kept Pace," *Wall St. J.*, September 13, 1996 at B2.

must devote increasing resources to programming and operations, but find themselves squeezed by higher costs and lower advertising revenue per capita. By establishing an exemption from closed captioning rules, the Commission would ensure these additional costs would not further unfairly hamper Spanish language broadcasters.

Such an exemption would be entirely consistent with the Commission's established willingness to exempt Spanish speaking programming from rules that might disproportionately injure service to the U.S. Hispanic community. The extension of foreign language programming is a recognized goal of the Commission. To achieve that goal, the Commission has previously been willing to waive certain rules in an effort to permit Spanish language broadcasters to overcome the numerous obstacles already hindering service to their viewers. 10/ The Commission has long recognized that the public benefits from these focused waivers, as they permit networks like Telemundo to "further several of the Commission's longstanding goals: encouraging the growth and development of new networks; fostering foreign-language programming; increasing programming diversity; strengthening competition among stations; and fostering a competitive UHF service." 11/ The Commission should not sacrifice Telemundo's continued efforts toward these goals by ignoring the unique difficulties a closed captioning requirement would impose on Spanish speaking programming.

10/ For instance, the Commission permanently waived the network representation rule to several growing Spanish-language television networks, including Telemundo. See *Network Representation Rule*, 68 R.R.2d 641 (1990).

11/ *Id.* at ¶12.

III. RECOMMENDATIONS

Based on the unique burdens faced by foreign language broadcasters, Telemundo requests that the Commission;


- Given the lack of captioning requirements in foreign countries, the Commission should exempt from captioning requirements any programming acquired from a programming source in a foreign country.
- Subject to a reexamination of circumstances in the future, the Commission should exempt foreign language broadcasters from captioning requirements.

IV. CONCLUSION

In light of the foregoing, the Commission should not impose any closed captioning requirements on foreign language programming, including that directed to Spanish speaking audiences, at this time.

Respectfully submitted,

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